October 17, 1996

UNITED STATES ENRICHMENT CORPORATION
RESPONSE TO "SEAG" PETITION AND SUPPLEMENTAL PETITION
FOR COMMISSION REVIEW OF DIRECTOR'S DECISION

I. INTRODUCTION

On September 13, 1996, the Director of Nuclear Material Safety and Safeguards of the Nuclear Regulatory Commission (NRC) issued a Director's Decision and proposed certificates of compliance for the United States Enrichment Corporation (USEC) authorizing continued operation of the Portsmouth, Ohio and Paducah, Kentucky gaseous diffusion plants (GDPs). The Director's Decision concluded that USEC's certification applications, the Department of Energy's (DOE) Compliance Plans, and the certificate conditions imposed by the NRC provide "reasonable assurance of adequate safety, safeguards, and security and compliance with NRC requirements." 61 Fed. Reg. 49,360, 49,361 (Sept. 19, 1996).

The Director's Decision is the product of a thorough and detailed NRC Staff review. The Portsmouth and Paducah applications each contain over 2,000 pages, including a Safety Analysis Report (SAR). The Staff review involved over 50 public meetings between USEC, the Staff, and the DOE, and over 2,000 detailed written Staff questions. As a result of this comprehensive and thorough process, the NRC issued a Compliance Evaluation Report (CER) for each GDP. The applications, NRC questions, USEC responses, and the CERs were made available to the public.

By a petition dated October 3, 1996, and a supplemental petition dated October 4, 1996, (collectively called "petition"), "Sycamore Environmental Awareness Group" (SEAG) requested an "opportunity to review the entire case file upon which the director's findings are based" and to preserve its right to "challenge and/or appeal" the Director's Decision. The documents which form the basis for the Director's Decision are in the NRC's public document rooms. Therefore,

SEAG has had an "opportunity to review the entire case." Furthermore, given its nature, SEAG's request does not appear to be intended as a petition for review under 10 C.F.R. § 76.62(c) (1996). Nevertheless, even if SEAG's petition is treated as a petition for review, it should be rejected. For the reasons set forth below, SEAG lacks legal standing to petition for Commission review and has provided no substantive information that would warrant Commission review of the results of the Staff's thorough assessment. Therefore, the SEAG petition should be denied.

II. SEAG LACKS LEGAL STANDING TO PETITION FOR COMMISSION REVIEW

Section 76.62(c) authorizes "any person whose interest may be affected" and who submitted written comments or provided oral comments at any meeting on the application or compliance plan to file a petition requesting Commission review of the Director's Decision. For several reasons, SEAG's petition does not satisfy Section 76.62(c).

First, neither SEAG nor Diana Salisbury, who filed the petition on behalf of SEAG, submitted written comments or provided oral comments at the meetings on the applications and compliance plans. Because they did not participate in the proceeding before the Director on the applications for the GDPs, they may not petition for review of the Director's Decision.

Second, Section 76.62(c) permits only persons "whose interest may be affected" by the Director's Decision to submit a petition for Commission review. This language is identical to that in Section 189a of the Atomic Energy Act and NRC regulations, and requires a demonstration of "legal standing." *See, e.g.* 42 U.S.C. § 2239a (1994); 10 C.F.R. §§ 2.714(a)(1), 2.1205(a); Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 N.R.C. 72, 80 (1993). To demonstrate such standing, a person or organization must show:

(1) that it could suffer an actual "injury in fact" as a result of the action to be taken by the NRC; and (2) that its interests arguably are within the "zone of interests" protected by the relevant statutes.[1]

SEAG has made no effort to demonstrate its standing in this matter. Its petition contains no discussion of the nature of its organization, the interests or geographic location of its members, the "particularized" injury it or its members may suffer if the Director's Decision becomes effective, or the extent to which those interests are within the "zone of interests" protected by relevant statutes. Instead, the petition contains only generalized claims about the impacts of operation of the GDPs and falls far below the standard set in a long line of NRC cases.[2]

The petition is particularly deficient as it applies to the Paducah plant. The distance between that facility and SEAG's apparent address in Sardinia, Ohio is over 300 miles. This is far beyond the zone of interest that could be affected by Paducah. For example, even in commercial nuclear power reactor licensing cases, persons living beyond 50 miles from a facility are generally not afforded standing because they are outside of the potentially affected zone.[3] Thus, SEAG has not demonstrated standing to file a petition for review with respect to Paducah.

1/ Director, OWCP v. Newport News Shipbuilding, 115 S.Ct. 1278, 1283 (1995); Kelly v. Selin, 42 F.3d 1501, 1508 (6th Cir.) cert. denied, 115 S.Ct. 2611 (1995); Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 N.R.C. 25 (1993).

2/ See Georgia Power, 38 N.R.C. at 32; Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 N.R.C. 327, 332-33 (1983); Northern States Power (Pathfinder Atomic Plant), LBP-89-30, 30 N.R.C. 311 (1989); Apollo, *supra.*

3/ Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 N.R.C. 1423, 1447 (1982); Dairyland Power Cooperative (LaCrosse Boiling Water Reactor), ALAB-497, 8 N.R.C. 312, 313 (1978); Public Service Co. of Oklahoma (Black Fox Units 1 and 2), ALAB-397, 5 N.R.C. 1143, 1150 (1977).

Even with respect to Portsmouth, SEAG has not demonstrated standing. Sardinia is approximately 40 to 50 miles from Portsmouth. Individuals residing at such a distance just barely have a presumption of standing in proceedings involving construction permits and operating licenses for nuclear power plants. However, the area potentially affected by a severe accident at a GDP is far smaller than for a power reactor. Thus, the zone of interest for purposes of standing is correspondingly smaller for a GDP. For example, in the Apollo case, the petitioners lived less than one eighth of a mile to two miles from the Apollo materials facility. Nevertheless, the Licensing Board concluded that they lacked standing because:

> [the] "fifty-mile" presumption does not apply in materials licensing actions. Instead, a petitioner must show. . .what particular impact the planned licensing action will have upon its legitimate (e.g., health, safety, or environmental) interests. . . . [I]t is not enough. . simply to assert they live close to the Apollo facility.

37 N.R.C. at 83-84. SEAG has not demonstrated that Portsmouth would have any effect 40 to 50 miles from the plant, and therefore it does not have standing with respect to Portsmouth.

III. RESPONSE TO SEAG's OBJECTIONS TO THE NOTICE

A. Petition for Extending the Comment Period Regarding Certification

SEAG argues that the 15-day time period for filing a petition is inadequate and requests a 30 day extension. Petition at pp. 1-2. SEAG does not identify any particular facts or "good cause" in support of an extension, but instead argues in general that 15 days is insufficient.

SEAG's arguments represent a challenge to Section 76.62(c), which requires a 15-day filing period. During the Part 76 rulemaking proceeding, the NRC specifically considered whether the 15 day period should be extended and chose not to alter it. Instead, NRC added Section 76.74(b) to allow extensions in individual cases "for good cause." *See* 59 Fed. Reg.

48,944, 48,951-52 (Sept. 23, 1994). If SEAG needs more time to prepare its petition, it should have requested an extension under Section 76.74(b) and demonstrated "good cause."

Here, SEAG has only stated that more time is needed to allow public participation. However, the certification applications have been available for public review for approximately one year. Additionally, NRC's questions, USEC's responses, and NRC's CERs were also made publicly available at the time of their issuance. Thus, SEAG and other members of the public have had much more than 15 days to review the basic technical documents in these proceedings. SEAG has failed to indicate why it could not have reviewed these documents earlier and identified issues for review. As is well-established in NRC case law, a petitioner cannot claim good cause for an extension when the documents in question have been publicly available for several months.[4] In fact, in this case, SEAG has failed to allege any facts that might constitute good cause for an extension. Therefore, this aspect of its petition should be denied.

B. **Limitations on Persons Who May Comment and National Hearings**

SEAG objects that NRC should not attempt to limit public participation to persons who provided comments in previous agency proceedings, and that petitions or comments from "any" citizen, interested person, taxpayer, or utility ratepayer should be given consideration. SEAG also requests that "national public hearings" be held to solicit comments from "all U.S. citizens and taxpayers." Petition at pp. 1-3. As discussed below, SEAG's objections and requests are contrary to NRC regulations and practice.

4/ See, e.g., Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-828, 23 N.R.C. 13, 21 (1986).

Sections 76.37 and 76.39 provide an opportunity for submitting written comments and public meetings on the applications for certification of the GDPs. Part 76 does not afford any rights to a hearing on the applications or on petitions for review of Director's Decisions.

Letters of comment may be submitted at any time, and Part 76 does not limit those rights in any way. However, Section 76.62(c) properly limits petitions for Commission review to certain persons who previously participated and "whose interest may be affected." As discussed in Section II above, that limitation is well-founded in NRC precedent.

Furthermore, the limitations discussed above are well within the authority of the Commission. The Energy Policy Act (42 U.S.C. § 2297f) broadly directs the NRC to issue "such standards as are necessary" to govern the GDPs and to "establish a certification process" to ensure compliance with those standards; it does not direct the NRC to craft those standards and processes in any particular way. Thus, the NRC has very broad discretion to establish reasonable procedural requirements.[5] In Kelley v. Selin, 42 F.3d at 1511, the court stated:

> In order to prevail on a claim that the NRC is bound to conduct its proceedings in a particular manner, a petitioner "must point to a statute specifically mandating that procedure, for 'absent constitutional constraints or extremely compelling circumstances' courts are never free to impose on the NRC (or any other agency) a procedural requirement not provided for by Congress." [Citations omitted] . . . . "In fact, . . .the Atomic Energy Act of 1954 creates 'a regulatory scheme which is virtually unique in the degree to which broad responsibility is reposed in the administrative agency . . .'" [particularly with respect to the formulation of] its own rules of procedure and methods of inquiry. [Citations omitted].

Finally, it is well-established that an individual's economic interest as a taxpayer or ratepayer does not fall within the zone of interests protected by the Atomic Energy Act and the

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5/ Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 544 (1978) (a "very basic tenet of administrative law [is] that agencies should be free to fashion their own rules of procedure."); Siegel v. AEC, 400 F.2d 778, 786 (D.C. Cir. 1968).

National Environmental Policy Act (NEPA).[6] Therefore, such interests are insufficient to confer standing in NRC proceedings.

Consequently, SEAG's objection to the limitation of individuals who may petition for review, and its request for national hearings, should be rejected.

IV. RESPONSE TO SEAG's SUBSTANTIVE OBJECTIONS

A. Request for Identification of Responsible Parties

SEAG requests that NRC identify the parties who are responsible for the cleanup and restoration of the GDP sites and for any catastrophic accident. It asks the NRC to clarify how DOE can be responsible for decommissioning of the GDPs, while USEC is responsible for facility stabilization and deactivation. It also asks who owns the buildings at the GDPs and the wastes generated by the GDPs. Finally, SEAG questions how affected parties may obtain information from USEC once it is privatized. Petition at pp. 3-4, 11-12; Supp. Petition at pp. 2-4.

USEC is only leasing portions of the GDPs from DOE (CERs Section 1.2) and must return this property to DOE at the end of the lease term.[7] Under Section 4.4 of the Lease

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6/ See, e.g., Public Service Co. of New Hampshire (Seabrook Station, Unit 2), CLI-84-6, 19 N.R.C. 975, 978 (1984); Pathfinder, 30 N.R.C. at 315; Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 N.R.C. 610, 614 (1976); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 N.R.C. 1418, 1421 (1977); Drake v. Detroit Edison Co., 453 F. Supp. 1123, 1130 and fn. 3 (D.C. W.D. Mich. 1978) (generalized economic concerns common to all members of the public do not satisfy requirements for standing), *citing* U.S. v. Richardson, 418 U.S. 166, 176-177 (1974); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 N.R.C. 327, 332 (1983).

7/ "Lease Agreement Between the United States Department of Energy and the United States Enrichment Corporation," dated July 1, 1993, Section 4.3.

Agreement, USEC is required to deactivate and place the GDPs in a safe, secure condition prior to returning the facilities to DOE. Under the Energy Policy Act (42 U.S.C. § 2297c-2(d)) and the USEC Privatization Act (42 U.S.C. § 3107), DOE has the bulk of the responsibility for decommissioning and is responsible for pre-existing conditions. CERs Chapter 14. As provided in the USEC Privatization Act, USEC's responsibility for decommissioning and decontamination is limited to treatment and disposal of certain wastes generated by USEC. CERs Chapter 14. In order to fulfill this responsibility, USEC has provided the requisite financial assurance in accordance with 10 C.F.R. § 76.35(n) and will be required to provide further, specific financial assurance guarantees prior to privatization. USEC's financial assurance arrangements were described in its applications, are in full compliance with NRC regulations, and were reviewed and approved in Chapter 14 of the CERs.

The financial responsibility for the offsite impacts of accidents at the GDPs leased by USEC is governed by statute. The Energy Policy Act and the USEC Privatization Act state that the lease between DOE and USEC is deemed to be a DOE contract for the purposes of the Price-Anderson Act. This makes DOE responsible for indemnifying DOE contractors for activities that involve the risk of public liability. (42 U.S.C. § 2297c-2(f); 42 U.S.C. § 2210(d); Section 3107 of Pub. L. 104-134). Article X of the Lease Agreement between USEC and DOE implements these provisions. As such, financial responsibility for accidents is governed by statute and is beyond the jurisdiction of the NRC.

Finally, once USEC is privatized, members of the public will be able to obtain information regarding the GDPs in the same manner that they can obtain information regarding

other licensed activities. In particular, NRC maintains public document rooms with relevant correspondence between USEC and NRC that will be available for review by the public.[8]

It should be emphasized that SEAG has merely requested information regarding these matters. It has not identified any impropriety or inadequacy in division of responsibility between USEC and DOE, in the decommissioning funding, or in the Price-Anderson arrangements for the GDPs. Therefore, this aspect of the petition provides no basis for Commission review.

B. **Finding of No Significant Impact and Request for an Environmental Impact Statement**

SEAG requests that NRC prepare an environmental impact statement (EIS) for the GDPs. As a basis for this request, SEAG argues that the NRC has not addressed the existing contamination at the GDPs and the cumulative impacts that can reasonably be expected as a result of certification. Additionally, SEAG argues that NRC has improperly focused on whether operation of the GDPs under NRC regulation would result in greater impacts than operation under DOE regulation. Petition at pp. 2-3, 4, 8. SEAG's arguments should be rejected.

First, SEAG's arguments represent an improper challenge to the NRC's regulations. 10 C.F.R. § 51.22(c)(19) provides that certification of the GDPs under Part 76 is subject to a categorical exclusion. Thus, by regulation, NRC need not prepare an EIS for certification.

8/ SEAG also states that USEC refused to provide waste stream outputs stating that this is a "corporate privilege." USEC assumes that this comment refers to certain information on the volume of waste and depleted uranium it generates -- which USEC originally sought to exempt from public disclosure under the Freedom of Information Act. That information has now been fully disclosed in both applications, in the Depleted Uranium Management Plans and the Decommissioning Funding Program Descriptions.

Second, NRC properly limited its review of environmental issues to the incremental impacts of certification. As the NRC stated when it issued Part 76:

> The Department of Energy prepared an Environmental Impact Statement for the Portsmouth gaseous diffusion plant in 1977 and an Environmental Assessment of the Paducah facility in 1982. The NRC has reviewed those documents, as well as environmental reports prepared by DOE for both facilities in 1992 and environmental audits prepared by DOE prior to turning operation of the Facilities over to the Corporation in 1993. The NRC also conducted extensive site visits. No significant differences in operations, previously evaluated by DOE, were identified that would result in current operations having significantly different environmental effects than those already evaluated in DOE's environmental reviews.

59 Fed. Reg. at 48,948. There is nothing in NEPA or NRC's regulations which requires NRC to duplicate the prior environmental reviews performed by DOE for these GDPs. As indicated in 10 C.F.R. § 76.35(c), NRC may limit its review to "deviations from the published Environmental Impact Statement, Environmental Assessments, or environmental permits under which the plants currently operate." Similarly, the courts have held that an EIS is not needed for mere continued operation of a facility when the federal action in question will not change the environmental impacts of the facility.[9]

Furthermore, the NRC does not have statutory jurisdiction over pre-existing conditions resulting from DOE activities. In particular, the Energy Policy Act states that DOE has responsibility "with respect to conditions existing before the transition date" from DOE to USEC operation of the GDPs. (42 U.S.C. § 2297c-2(d)). As the NRC discussed in the Statement of Considerations for Part 76 (59 Fed. Reg. 48,944, 48,948 (Sept. 23, 1994)): "As established by the Act, the NRC will issue a certificate only for the current operations of the facility and will

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9/ See, e.g., Burbank Anti-Noise Group v. Goldschmidt, 623 F.2d 115 (9th Cir. 1980), cert. denied, 450 U.S. 965 (1981).

not evaluate preexisting conditions. All preexisting conditions are outside of NRC authority." Thus, NRC is precluded by statute from evaluating pre-existing conditions as requested by SEAG.

In summary, NRC appropriately focussed on the environmental impacts of deviations from DOE's environmental reviews and changes in operation resulting from certification. Based upon its assessment of these incremental impacts, NRC determined that the certifications will not result in a significant environmental impact. Accordingly, NRC is not required to prepare an EIS for certification of the GDPs. SEAG's arguments to the contrary represent a challenge to NRC's regulations and should be rejected.

C. **Compliance with the Compliance Plans**

SEAG argues that NRC should not issue the certificates for the GDPs until USEC comes into full compliance with the compliance plans. Petition at pp. 2, 9.

SEAG's argument is nonsensical. Both the Energy Policy Act (42 U.S.C. § 2297(f)) and the Commission's regulations (10 C.F.R. § 76.35(b)) allow NRC to certify the GDPs subject to a DOE compliance plan for any areas of noncompliance. A compliance plan would be unnecessary if USEC were in full compliance with all requirements. Thus, despite the fact that USEC is not currently in compliance with all elements of the regulations identified in the compliance plans, NRC is authorized by statute and its own regulations to issue the certificates. Accordingly, SEAG's arguments should be rejected as an improper challenge to the Energy Policy Act and Part 76.

D. **Impacts of Other Fuel Cycle Facilities**

SEAG argues that certification of the GDPs would have the indirect effect of perpetuating nuclear energy as a source of electricity and will necessitate additional waste disposal or recycling facilities. SEAG implies that NRC is required to consider the environmental impacts of such facilities as part of its environmental reviews of the GDPs. Petition at pp. 2-3, 5-6.

Any decision on operation of existing or new nuclear power reactors and associated waste disposal or reprocessing is independent of certification of the GDPs. In particular, these GDPs are not the only source of enriched uranium, and existing or new nuclear plants would be permitted to operate even if the GDPs were to be shut down. Conversely, the NRC's decision to certify the GDPs would not prevent existing nuclear plants from shutting down. As a result, operation of other fuel cycle facilities is independent of operations of the GDPs, and NRC need not consider the environmental impacts of operation of nuclear power plants and waste disposal or reprocessing facilities in deciding whether to issue certificates for the GDPs.

E. **Decommissioning and Decontamination**

SEAG states that NRC should address the costs and risks of decontamination and decommissioning now, versus the costs and risks of decontamination if the GDPs continue to operate. It alleges that the GDPs will pose significant risks unless decommissioning and decontamination begin immediately. SEAG argues that NRC should request and receive "an agenda of full D&D" from USEC before proceeding with certification. SEAG also questions whether the GDPs are needed in light of a projected surplus of enriched uranium. Finally, SEAG

asks several questions regarding the technology for decontaminating metal from disassembled process facilities at the GDPs. Petition at pp. 5, 11; Supp. Petition at pp. 1-2.

As discussed in Section A above, USEC's responsibility is limited to treatment and disposal of certain wastes which it generates. USEC has established decommissioning funding provisions, and Chapter 14 of NRC's CERs evaluates USEC's provisions and finds them acceptable. DOE is responsible for decontamination and decommissioning of the GDPs. Therefore, there is no basis for USEC to submit "an agenda of full D&D" to the NRC. Furthermore, since decontamination of metal disassembled from the GDPs is the responsibility of DOE, questions regarding such decontamination are not within the jurisdiction of the NRC.

Finally, SEAG has not provided a sufficient basis for decommissioning the GDPs now. The enriched uranium produced by the GDPs is needed. Currently, the GDPs supply over 65% of the domestic and Asian commercial demand for enriched uranium and over 30% of the worldwide commercial demand, and there currently are no other facilities in the United States that are capable of producing enriched uranium for commercial purposes. Furthermore, shutdown and decommissioning of the GDPs would be directly contrary to one of the underlying purposes for which Congress established USEC, i.e., the maintenance of a reliable and economical domestic source of uranium enrichment services. (42 U.S.C. § 2297a(8)). Furthermore, in its EIS and environmental assessment for the GDPs, DOE has evaluated the environmental impacts of operation of the GDPs and the alternative of plant shutdown, and has

concluded that the plants are needed and should not be shut down.[10] SEAG has not identified any basis for questioning this conclusion or for Commission review of the Director's Decision.

F. **Past Releases of Radioactive Material**

SEAG alleges that not all information on past releases of radioactive material from operation and accidents involving the GDPs has been made available to the public. SEAG states that Portsmouth is sited over one of the largest underground rivers in the Midwest, and that fractures of bedrock represent potential pathways for contamination migration. It also alleges that significant releases have occurred and have resulted in onsite and offsite contamination, including contamination of sediment and groundwater around Portsmouth. SEAG argues that certification should not proceed until NRC conducts a full environmental analysis of existing contamination at both GDPs. Petition at pp. 5-6, 7-9.

As discussed in Section B above, NRC is only required to evaluate the incremental environmental impacts attributable to certification; it is not required (and indeed does not have the statutory authority) to evaluate pre-existing conditions. Consequently, this portion of SEAG's petition does not provide a basis for Commission review. In any case, as discussed below, the allegations in SEAG's petition do not call into question the adequacy of the Director's Decision.

Accidental UF_6 releases that have occurred at the Portsmouth GDP have been previously identified and evaluated as described in Section 4.2 of the Portsmouth SAR. Additionally, the Environmental Compliance Status and Environmental Monitoring Report in the Portsmouth

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10/ Final Environmental Impact Statement, Portsmouth Gaseous Diffusion Plant Site (May 1977), Sections 1.9 and 9.1; Final Environmental Impact Assessment of the Paducah Gaseous Diffusion Plant Site (Aug. 1982), Sections 1.6 and 6.1.

application identifies the amount of uranium and radioactivity in soil, vegetation, water, sediment, and fish around Portsmouth. In rendering his decision, the Director considered the history of operation of the Portsmouth GDP, including the UF_6 releases that have occurred. Portsmouth CER Sections 1.5 and 9.3. Consequently, past releases of UF_6 and contamination at the Portsmouth GDP have already been fully identified and evaluated for the Director's Decision and there is no basis for the Commission to review that decision.

The subsurface hydrology of the Portsmouth plant is thoroughly described in Section 2.5 of the Portsmouth SAR and was reviewed in Section 2.4 of the Portsmouth CER. The facilities operated by USEC at Portsmouth are located on an old river valley that was filled in by low-permeability glacial deposits. Contrary to SEAG's statements, these deposits beneath the site do not make up the major regional aquifer. As described in Section 2.5.1.1 of the Portsmouth SAR, the major regional aquifer is the sand and gravel glacial deposits of the Scioto River, located west of the Portsmouth site. The subsurface hydrology of the site has been extensively studied and characterized by DOE in the remedial studies. In addition, DOE continues to implement an extensive groundwater monitoring program for the site, which includes sampling of off-site residential wells. As stated in Portsmouth SAR Section 2.5.2.3, monitoring of springs and private wells near the Portsmouth site has not detected levels of uranium, technetium, total alpha, or total beta above background to date. Therefore, the potential for groundwater contamination has been adequately investigated. Additionally, Table 10 of the Environmental Compliance Status and Environmental Monitoring Report in the Portsmouth application discusses the amount of uranium, technetium, and radioactivity measured in the sediment around Portsmouth, and shows that the levels are insignificant. In light of this information, SEAG's speculation that

USEC's operations at Portsmouth have caused offsite groundwater and sediment contamination provides no basis for Commission review.

G. **DOE's Collection of Data and Compliance Activities**

SEAG alleges that there have been historic weaknesses and deficiencies in DOE collection of environmental data and environmental compliance activities at Portsmouth. Petition at pp. 6-7. NRC has no jurisdiction over DOE activities at the GDPs. Furthermore, SEAG's petition contains no allegations questioning the adequacy of USEC's plans and activities for the GDPs. Therefore, this portion of SEAG's petition does not provide a basis for Commission review.

H. **Alleged Health Effects Near Portsmouth**

SEAG alleges that "high" adverse health effects, including deaths and cancer, have occurred near the Portsmouth plant, and that these effects should be evaluated by independent health professionals. As support for its allegations, SEAG references an evaluation by "CORVA, the Health Planning and Resource Development Association of the Central Ohio River Valley," and unspecified studies "by local residents." Petition at p. 9.

As discussed in Section B above, NRC is not required to consider existing impacts from the GDPs, but only the incremental impacts of certification. As a result, the allegations by SEAG need not be considered. Nevertheless, even if the Commission were to consider these allegations, they do not provide a sufficient basis for Commission review of the Director's Decision.

The study mentioned by SEAG is apparently the Ohio Mortality Mapping Study completed in May 1996[11]. USEC has reviewed the Mapping Study and disagrees with SEAG's conclusions and implications. The Mapping Study gives a cancer death rate of 151 to 165 per 100,000 persons for 16 of Ohio's 88 counties, as compared to a State-wide average of 144 per 100,000. While these findings indicate higher relative cancer rates in these portions of the State, nothing in SEAG's petition or the Mapping Study indicates any connection between those rates and the Portsmouth plant. Though SEAG states that six of these counties with "high death rates" lie along the Ohio River, it fails to mention that Pike County, where the Portsmouth plant is located, is not one of the counties with higher rates. Pike County cancer mortality rates (137 to 151 per 100,000) are consistent with the State average. SEAG also fails to note that higher mortality rates can be found in counties along the Ohio River upstream of the plant's watershed.

USEC has consulted with the professional staff of the American Cancer Society regarding estimated cancer death rates for 1996.[12] According to the American Cancer Society, the estimated mortality rate for cancer in Ohio is 180 per 100,000. By comparison, the cancer mortality rate for Kentucky is 192 per 100,000 and 124 per 100,000 for Utah. Considering the wide range in mortality rates nationwide, the county to county differences within Ohio are not significant.

11/ "Ohio Mortality Mapping Study," Prepared by Ohio's Health Service Agencies through The Ohio Association for Areawide Health Planning, Inc., May 10, 1996.

12/ "Cancer Facts & Figures - 1996," American Cancer Society, 1996.

In fact, a July, 1990 study by the National Cancer Institute[13] failed to show a statistically significant impact from Portsmouth plant operations. The overall conclusion to be drawn from the epidemiology associated with the Portsmouth plant, is that plant operations have not adversely impacted the health of the surrounding communities. Furthermore, the Agency for Toxic Substances and Disease Registry (ATSDR)[14], an agency of the U.S. Department of Health and Human Services, recently performed a study, which included a cancer mortality study of Pike, Scioto, Adams, Highland, Ross, Finton and Jackson counties. The Portsmouth plant is located entirely within Pike County, and Scioto County lies between the plant and the Ohio River. The ATSDR study reviewed data compiled by the Centers for Disease Control and Prevention, and the National Center for Health Statistics, Office of Analysis and Epidemiology. ATSDR's report notes, among other things, that Scioto County, but not Pike County, appears to have slightly higher mortality rates for cancer, but that when the data is age-adjusted for the population, the cancer rate falls in line with the rest of the state. ATSDR Study at p. 36. The ATSDR report concludes that "the Portsmouth Gaseous Diffusion Plant and its operations represent no apparent hazard to human health." ATSDR Study at p. 39. This report was provided to the EPA and was issued for public comment. The comment period expired in February 1996 and the report may be modified in some fashion as a result of public comments.

13/ Jablon, S., Hrubec, Z., Boice, J. D., Stomr. B. J., Cancer in Populations Living Near Nuclear Facilities, Volume 3, Individual Facilities: Cancer by 5 Year Time Intervals, National Cancer Institute, July, 1990, Table 2-A.8.

14/ "Public Health Assessment for US DOE Portsmouth Gaseous Diffusion Plant, Piketon, Pike County, Ohio, Cerclis No. OH7890008983," U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry, December 19, 1995.

However, clearly the report did not find any basis for concluding that Portsmouth plant operations are the cause of higher cancer rates in some of the surrounding counties.

Given this information, SEAG's allegations provide no basis for Commission review of the Director's Decision.

I. **Worker Protection**

SEAG argues that worker health risks and exposures should be addressed by NRC. It also asks how USEC and NRC will comply with the Occupational Safety and Health Administration (OSHA) regulations regarding worker exposure to industrial chemicals, lead paint, and asbestos, and states that the Environmental Protection Agency (EPA) has admitted that there can be synergistic impacts from chemicals. Petition at pp. 9-10.

USEC has programs to ensure compliance with applicable OSHA and EPA requirements relating to materials such as lead and asbestos. However, the NRC does not have jurisdiction over these non-radiological materials. NRC/OSHA "Memorandum of Understanding With Respect to the Gaseous Diffusion Plants," 61 Fed. Reg. 40,249 (Aug. 1, 1996). Thus, SEAG's argument is beyond the scope of the NRC's jurisdiction.

In any case, the toxicology of the chemicals used at the GDPs is well known, well documented, and as required by OSHA's Hazards Communication Standard (29 C.F.R. § 29.1910.1200), well communicated to employees. Material Safety Data Sheets (MSDS) are readily available for employee use, employees are trained in their use, and employees are routinely monitored for exposure to hazardous chemicals. Respiratory protection for chemical and radiological exposures is provided in accordance with the respiratory protection program. Section 3.23 of the Technical Safety Requirements specifies measures for worker protection

from UF_6 process hazards. Radiation Protection and Chemical Safety Programs are presented in Sections 5.3 and 5.6 of the SARs. The Director reviewed these aspects of the applications and found them acceptable in Sections 7 and 10 of the CERs. SEAG's petition does not identify any deficiencies in these controls and therefore provides no basis for Commission review.

While toxicological synergistic effects have been demonstrated for some combinations of complex chemicals (such as the organic compounds in pesticides and herbicides),[15] synergistic effects between the less complex inorganic compounds and chemicals used at the GDPs have not been identified in standard toxicology texts, such as Cassarett and Doull's Toxicology, the Basic Science of Poisons, or The Handbook of Experimental Pharmacology, XXXVI.[16]

As discussed in Section H above, there is no evidence to suggest that the past 40 years of plant operation have resulted in any adverse health impacts in the areas surrounding the plants. Any real and significant synergistic effects from exposures to chemicals from the plants or from any other source in the area, such as other industries, should already have manifested themselves as observable health impacts. Since no such impacts have been observed, and since documented synergistic effects for exposures to chemicals used at the GDPs have not been found, further study to evaluate such synergistic effects is unwarranted.

Based upon the above, SEAG's petition does not provide a sufficient basis for the Commission to accept review of the Director's Decision.

15/ Doull, J., Klassen, K.D., and Amdur, M.O., Cassarett and Doull's Toxicology, The Basic Science of Poisons, Second Edition.

16/ Hodge, H.C., Stannard, J.N., Hursh, Handbook of Experimental Pharmacology, Uranium, Plutonium, Transplutonic Elements, Springer-Verlag, New York, 1973, pp. 12-56.

J. **Environmental Justice**

In a section of its petition entitled "Environmental Justice," SEAG argues that workers appear faced with the risk of working in the GDPs or becoming unemployed, that there should be an emphasis on safety, and that NRC must implement an executive order pertaining to environmental justice. Petition at pp. 10-11.

Executive Order 12,898 on environmental justice (59 Fed. Reg. 7629 (Feb. 16, 1994)) states that when a federal action has substantial environmental or health impacts, the agency shall address any disproportionate impacts on the health and environment of minority and low income populations. NRC is an independent agency and is not subject to executive orders. Nevertheless, it has voluntarily decided to implement the Executive Order on environmental justice.

Nothing in SEAG's petition identifies a violation of the Executive Order on environmental justice. SEAG does not identify or even allege that certification of the GDPs will cause a disproportionate impact on minority or low income populations. Furthermore, considering that the GDPs have been in operation for forty years, and since NRC has determined that certification will not have a significant environmental impact, it would appear that the Executive Order is not applicable to certification of the GDPs.

SEAG states that safety should take precedence. USEC agrees. As stated in Section 6.1 of the SARs for the GDPs, USEC has issued a "Code of Business Conduct" that describes its commitment to operate the GDPs in a manner which assures the health and safety of the public.

SEAG implies that workers are being forced to choose between the risks of working at the GDPs and unemployment. As discussed in Section I above, USEC has provisions to protect

workers, and they are not subject to any substantial risk. Apparently, SEAG desires the NRC to decommission the GDPs and force workers into unemployment.

For the reasons discussed above, SEAG has not identified any violation of the Executive Order on environmental justice. Therefore, its petition provides no basis for Commission review of the Director's Decision.

K. DOE's Landlord Obligations

SEAG asks the NRC to answer certain questions regarding DOE's landlord obligations, including its funding obligations, the period of time that DOE plans to remain active in its landlord capacity, and compliance of the DOE and USEC Lease Agreement with federal acquisition regulations. SEAG also requests a copy of the Lease Agreement. Supp. Petition at pp. 2-3.

A copy of the Lease Agreement was provided to NRC on April 15, 1996 and the non-proprietary portions are a matter of public record. Issues regarding compliance of the Lease Agreement with federal acquisition regulations, DOE's landlord funding obligations, and the period of time for which DOE will be the landlord are not relevant to the certification decisions and are beyond the jurisdiction of the NRC in these proceedings. Therefore, these issues are not an appropriate subject for Commission review of the Director's Decision.

V. CONCLUSION

The Director has issued a well-supported and documented decision based upon a thorough evaluation of USEC's applications, its responses to Staff questions, public comments and other information in the record. SEAG lacks standing to challenge that decision and its

petition provides no basis for the Commission to question the Director's Decision. Therefore, USEC respectfully requests that the SEAG petition for Commission review be denied.